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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re Application for Exemption from
Electronic Public Access Fees by Jennifer
Gollan and Shane Shifflett,

Case No. MISC 12-80113 JW

**APPLICANTS JENNIFER GOLLAN AND
SHANE SHIFFLETT'S NOTICE OF
APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT**

Assigned to the Hon. James Ware

Original Application Filed: March 19, 2012
Re-Application Filed: May 8, 2012

1 Notice is hereby given Applicants Jennifer Gollan and Shane Shifflett ("Applicants"),
2 hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order Denying
3 Application for Exemption from Electronic Public Access Fees, entered in this case on May 16,
4 2012 (the "Order"), and all interlocutory orders that gave rise to that Order. A true and correct
5 copy of the Order is attached hereto as Exhibit A.

6 Attached to this Notice as Exhibit B is Petitioner's Representation Statement, pursuant to
7 Federal Rule of Appellate Procedure 12(b) and Ninth Circuit Rules 3-2(b) and 12-2.

8
9 DATED: June 11, 2012

LAW OFFICE OF JUDY ALEXANDER
JUDY ALEXANDER

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE

12
13 By: /s/Thomas R. Burke
Thomas R. Burke

14 Attorneys for Applicants
15 JENNIFER GOLLAN and SHANE SHIFFLETT
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re Application for Exemption from
Electronic Public Access Fees by Jennifer
Gollan and Shane Shifflett

NO. MISC 12-80113 JW

**ORDER DENYING APPLICATION FOR
EXEMPTION FROM ELECTRONIC
PUBLIC ACCESS FEES**

Presently before the Court is Jennifer Gollan ("Gollan") and Shane Shifflett's ("Shifflett") Application for Exemption from Electronic Public Access Fees.¹ In their Renewed Application, Gollan and Shifflett—who contend that they are "reporters" who work for the Center for Investigative Reporting—request a limited exemption from payment of electronic public access fees for the purpose of conducting a "research project" that is intended, *inter alia*, to "increase the public's understanding of the federal judiciary and its commitment to accountability." (*Id.* at 1-2.)

On March 21, 2012, the Court issued an Order Granting Exemption from Electronic Public Access Fees² to Gollan and Shifflett, who at that time were employees of The Bay Citizen. As the Court explained in its March 21 Order, the exemption was granted, *inter alia*, on the basis of Gollan and Shifflett's representation that The Bay Citizen is "a charitable and educational 501(c)(3) organization in California that is dedicated to informing and engaging the public with incisive

¹ (Renewed Application for Exemption from PACER Fees, hereafter, "Renewed Application," Docket Item No. 2.)

² (hereafter, "March 21 Order.")

1 research.”³ As the March 21 Order also explained, 28 U.S.C. § 1914—which sets forth the Electronic
2 Public Access Fee Schedule (the “Schedule”) promulgated by the Judicial Conference—provides that
3 “courts may, upon a showing of cause, exempt . . . section 501(c)(3) not-for-profit organizations”
4 from payment of electronic public access fees. However, the Judicial Conference Policy Notes on
5 the Schedule also state that courts “should not exempt . . . members of the media” from payment.

6 On April 10, 2012, the Court set an Order to Show Cause Hearing in regard to its March 21
7 Order, on the ground that it was not clear whether Gollan and Shifflett, as employees of The Bay
8 Citizen, were “members of the media,” which—the Court explained—would mean that they should not
9 be exempted from payment of electronic public access fees, pursuant to Judicial Conference policy.
10 At the April 30 Order to Show Cause Hearing, counsel for Gollan and Shifflett explained that The
11 Bay Citizen had recently merged with another organization, and further explained that Gollan and
12 Shifflett are both reporters. Further, counsel agreed that it would be appropriate for Gollan and
13 Shifflett to file a renewed application for an exemption from electronic public access fees, and that it
14 would also be appropriate for their exemption to be suspended pending the Court’s consideration of
15 their renewed application. Accordingly, the Court vacated its March 21 Order without prejudice to
16 Gollan and Shifflett to file a renewed application for an exemption. On May 8, 2012, Gollan and
17 Shifflett filed the present Renewed Application for Exemption.

18 Upon review, the Court does not find good cause to grant Gollan and Shifflett an exemption
19 from payment of electronic public access fees. As explained above, the Judicial Conference Policy
20 Notes to 28 U.S.C. § 1914 expressly state that courts should not grant such exemptions to “members
21 of the media.” As their Renewed Application makes clear, Gollan and Shifflett are reporters, which
22 makes them “members of the media.” (See Renewed Application at 1-6.) Thus, the Court finds that
23 it would be inappropriate to grant Gollan and Shifflett an exemption from payment of electronic
24

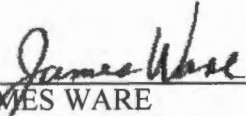
25
26 ³ In their Application which led to the Court’s issuance of the March 21 Order, Gollan and
27 Shifflett identified themselves as “reporters.” However, that Application focused on the status of
28 The Bay Citizen as a 501(c)(3) organization rather than on the status of Gollan and Shifflett as
reporters. The same emphasis was reflected in the Court’s March 21 Order.

1 public access fees, pursuant to the Judicial Conference policy precluding the granting of such
2 exemptions to members of the media.

3 Gollan and Shiflett contend that, even though the Judicial Conference Policy Notes state
4 that courts should not grant an exemption to members of the media, that prohibition "should not
5 apply to members of the media who are part of section 501(c)(3) nonprofit organizations," insofar as
6 the Schedule authorizes exemptions for such nonprofit organizations. (Renewed Application at 6.)
7 However, Gollan and Shiflett offer no authority in support of their interpretation of the Schedule
8 and the Judicial Conference Policy Notes associated with the Schedule. In the absence of any such
9 authority, the Court declines to adopt Gollan and Shiflett's interpretation.

10 Accordingly, the Court DENIES the Renewed Application for Exemption.

11
12
13 Dated: May 16, 2012



JAMES WARE
United States District Chief Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Judy Alexander jalexander@judyallexanderlaw.com
3 Thomas R. Burke thomasburke@dwt.com

4 **Dated: May 16, 2012**

Richard W. Wieking, Clerk

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6 By: /s/ JW Chambers

7 **William Noble**
8 **Courtroom Deputy**
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EXHIBIT A

REPRESENTATION STATEMENT

Pursuant to Federal Rule of Appellate Procedure 12(b) and Ninth Circuit Rules 3-2(b) and 12-2, Applicants/Appellants, Jennifer Gollan and Shane Shifflett, hereby certify that the parties in this case and the names, addresses, and telephone numbers of their respective counsel, are as follows:

Applicants/Appellants,

Jennifer Gollan and Shane Shifflett:

Judy Alexander (CA State Bar No. 116515)
LAW OFFICE OF JUDY ALEXANDER
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Real Party in Interest, United States District Court
for the Northern District of California, San Francisco Division:

Clerk of Court
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102-3489
(415) 522-2000

Honorable James Ware
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102-3489
(415) 522-2036 (Courtroom Deputy)

RESPECTFULLY SUBMITTED this 11th day of June, 2012.

LAW OFFICE OF JUDY ALEXANDER
Judy Alexander

DAVIS WRIGHT TREMAINE LLP
Thomas R. Burke

By s/Thomas R. Burke
Thomas R. Burke

Attorneys for Applicants/Appellants
Jennifer Gollan and Shane Shifflett

EXHIBIT B

Proof of Service

I, Natasha Majorko, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111. I caused to be served the following document:

APPLICANTS JENNIFER GOLLAND AND SHANE SHIFFLETT'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I caused the above document to be served on each person on the attached list by the following means:

- ☐ I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on _____, following the ordinary business practice.
(Indicated on the attached address list by an [M] next to the address.)
- ☐ I enclosed a true and correct copy of said document in an envelope, and placed it for collection and mailing via Federal Express on _____, for guaranteed delivery on _____, following the ordinary business practice.
(Indicated on the attached address list by an [FD] next to the address.)
- ☐ I consigned a true and correct copy of said document for facsimile transmission on _____.
(Indicated on the attached address list by an [F] next to the address.)
- ☒ I enclosed a true and correct copy of said document in an envelope, and consigned it for hand delivery by messenger on **June 12, 2012**.
(Indicated on the attached address list by an [H] next to the address.)
- ☐ A true and correct copy of said document was emailed on _____.
(Indicated on the attached address list by an [E] next to the address.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business. Executed on **June 12, 2012**, at San Francisco, California.

/s/ Natasha Majorko
Natasha Majorko

US District Court for the Northern District of CA Case No. MISC 12-80113 JW
PROOF OF SERVICE

Service List

Key:	[M] Delivery by Mail	[FD] Delivery by Federal Express	[H] Delivery by Hand
	[F] Delivery by Facsimile	[FM] Delivery by Facsimile and Mail	[E] Delivery by Email

[H] Clerk of Court
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102-3489

Telephone: (415) 522-2000

Real Party in Interest, United
States District Court
for the Northern District of
California, San Francisco

[H] Honorable James Ware
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102-3489

Telephone: (415) 522-2036
(Courtroom Deputy)

Real Party in Interest, United
States District Court
for the Northern District of
California, San Francisco